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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,926	07/30/2003	Lothar Gludercr	WSO-41953	1921
24131	7590	11/29/2007		
LERNER GREENBERG STEMER LLP			EXAMINER	
P O BOX 2480			GIBSON, ROY DEAN	
HOLLYWOOD, FL 33022-2480				
			ART UNIT	PAPER NUMBER
			3739	
			MAIL DATE	DELIVERY MODE
			11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/629,926

Applicant(s)

GLUDERER, LOTHAR

Examiner

Roy D. Gibson

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-10 and 13-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10, 13, 14, 16, 17, 19-24 and 27 is/are rejected.
- 7) ☒ Claim(s) 15, 18, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. No source is recited for the release of liquid media.

Note also in claim 1, that "the fluidic media" is not positively recited- only that the chambers or channels are "fillable" with fluidic media.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 5, 8-10, 13, 14, 16, 17 and 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Augustine et al. (6,497,720).

Augustine et al. disclose a device for releasing physical parameters (heat or cold) and for applying to body or body parts, comprising:

an applicator (fluid mattress) having at least two layers defining a space therebetween (Figures 1-7) with at least two closed chambers or separate zones laterally adjacent one another, each channel or chamber independently and individually fillable with fluidic media for independently and individually cooling the patient's body;

at least one of said layers being formed with at least one channel being fillable with fluidic media, said at least one channel being permeable (slots # 95 , Figure 9) for releasing the fluidic media (see col. 8, lines 33-42);

a control device connected to the applicator for controlling the pressure (thus flow) and temperature of the fluid media in the space, wherein the control device is connected to valves in feed lines for the fluidic media for controlling a flow through volume of the fluidic media; and

pressure sensors (39) connected to the control device with feedback to the controller to maintain the pressure of the fluid media within the chambers as required and inherently comprises temperature sensors or thermostats for controlling the temperature of the fluidic media; wherein the chambers are disposed next to one another; wherein channels leading to the chambers are impermeable to the fluid media in the chambers and at least one chamber or channel is averted from the body part, and at least one channel is disposed at a layer of the applicator facing the body part (col. 5, line 26-col. 7, line 15 and col. 8, lines 5-56).

Further to claims 21- 22, Augustine et al disclose the layers of the applicator of made of polyvinyl films (inherently flexible and col. 6, line 45).

Further to claims 23-24, Augustine et al disclose the applicator is disposed in a frame (85) surrounding the body at least partially and wherein the sensors (39) are disposed inside the frame.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. who fail to disclose an EKG output is monitored as a body parameter.

However, the examiner maintains that such a monitoring is typically provided as important information to an operator or medical personnel during or that at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Augustine et al. to include EKG monitoring.

Allowable Subject Matter

Claims 15, 18, 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/12/2007 have been fully considered but they are not persuasive in all respects.

1) Note that opening (95) in Figure 9 are disclosed by Augustine et al. for releasing fluidic media.

2) Regarding the flexible applicator, the examiner suggests the claim include language such as "flexible applicator sized and configured to wrap about an entire body or body parts.

Conclusion

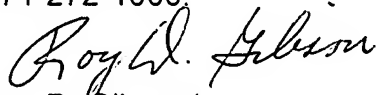
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


/Roy D. Gibson/
Primary Examiner
Art Unit 3739

November 26, 2007